

HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 173

HAWAII PROPERTY INSURANCE ASSOCIATION

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§16-173-1

§16-173-1 Authority. These rules are issued pursuant to the authority vested in the insurance commissioner, department of commerce and consumer affairs, under chapter 431:21, HRS. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-2 Definitions. As used in this chapter:

"Association" means the Hawaii Property Insurance Association created under section 431:21-103, HRS.

"Board" means board of directors.

"Commissioner" means the insurance commissioner.

"Division" means the insurance division.

"Plan" means the plan of operations.

"Rules" mean the regulations adopted by the commissioner under section 431:21-106, HRS. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §§431:21-102, 431:21-106)

§16-173-3 Applicability and scope. (a) The rules shall apply to all member insurers of the association.

(b) The rules shall continue in force until:

(1) Superseded by a plan submitted by the association and approved in writing by the commissioner; or

(2) Amended by rulemaking through chapter 91 procedures.

(c) In the event of a conflict between a provision of these rules and a provision of another regulation issued by the commissioner, the provisions of this chapter, shall be controlling as to the members of the association. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-4 Effective date. (a) These rules shall take effect ten days after filing with the office of the lieutenant governor.

(b) A policy in place on the date of effectuation of this plan shall remain in force until its cancellation or renewal. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-5 Membership. (a) An insurer authorized to transact property or casualty insurance in this State and not engaged in only writing motor vehicle insurance under section 431:10C-106, HRS, is a member of the association.

(b) An insurer ceases to be a member insurer on the day following the termination or cancellation of its certificate of authority. The insurer shall remain liable for any assessments based on the period for which its certificate of authority is issued. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §§431:21-102, 431:21-106)

§16-173-6 Board of directors. (a) The initial board of directors shall be appointed by the insurance commissioner within thirty days after these rules take effect.

(b) The terms of all appointed directors of the initial board shall commence on their date of appointment and continue through June 30, 1998.

(c) The initial board of directors shall determine the staggering and length of the terms of future directors' selected by the member insurers; provided that no term shall exceed three years.

(d) The first election for directors shall be held in 1998. Each member insurer shall have a single vote.

(e) The initial board of directors shall establish procedures to solicit nominations from member insurers prior to each annual election of directors.

(f) Except for the filing of unexpired terms, the terms of directors selected by member insurers shall commence on July 1st.

(g) The commissioner may appoint subsequent directors to represent insurance agents and the public for terms of one to three years.

(h) The members of the board shall elect a chairperson and such officers as deemed necessary from among their members. The board may establish such standing or special committees as may be deemed advisable or necessary to facilitate the operations of the association. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-7 Board meetings. (a) At any meeting of the board, each director shall have one vote. Seven directors shall constitute a majority of the board and a quorum for the transaction of business. The acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the entire board, except that an affirmative vote of a majority of the board is required to:

- (1) Recommend an assessment;
- (2) Borrow money; or
- (3) Propose changes to the plan to the commissioner for the commissioner's consideration.

(b) Directors of the board shall serve without compensation. Directors may be reimbursed for expenses incurred as board members provided that the

requests for reimbursement expenses be submitted to the board for approval. Approval of the majority of the full board shall be required for any total reimbursement to an individual director exceeding \$500.

(c) The board may determine a schedule for regular meetings as it deems appropriate.

(d) Any meeting of the board shall be governed by the most recent edition of Robert's Rules of Order. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §§431:21-105, 431:21-106)

§16-173-8 Special meetings. Special meetings for the board may be called by the chairperson at the request of any two directors. Not less than five days' written notice shall be given to each director of the time, place, and purpose of any special meeting. The directors shall attend any special meeting in person, unless a majority of the board agrees to hold such a meeting by teleconference. Any board member not present or not participating by teleconference may consent or object in writing to any specific action taken by the board. Any action at any special meeting approved by a majority of directors, including those consenting in writing, shall be a valid board action. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §§431:21-105, 431:21-106)

§16-173-9 Annual meeting of member insurers. (a) An annual meeting of all member insurers shall be held during the month of April.

(b) The annual meeting of member insurers shall be held at a date, time, and location approved by the board. The board shall give each member insurer at least thirty days prior written notice of the date, time, and location of the annual meeting of member insurers. Such notice shall be given either by personal delivery or mail. If mailed, the notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the member insurer at the member insurer's address as it appears in the records of the association.

(c) At each annual meeting of member insurers, each member insurer may be present in person or by proxy. Fifty-one per cent of the members present in person or by proxy shall constitute a quorum.

(1) At the annual meeting of member insurers, each member insurer shall have a single vote. The vote may either be made in person or by proxy.

- (2) A proxy shall be appointed by a written instrument executed by an officer or director of the member insurer and filed with the chairperson of the board or with such other presiding officer of the meeting.
- (3) No written proxy authorization shall be valid after sixty days from the date of its execution, unless otherwise provided in the proxy.
- (d) At each annual meeting of member insurers, the member insurers present may:
 - (1) Review the plan and propose any necessary or appropriate amendments to the board. The board may convey any proposed changes to the plan to the commissioner for the commissioner's consideration;
 - (2) Review each outstanding contract with servicing facilities and the administrator and, to the extent possible, propose corrections, improvements or additions to the board for its consideration and action;
 - (3) Review operating expenses, claim costs, and other financial records to determine if an assessment is necessary for the proper administration of the association. If such assessment is determined to be necessary, the member insurers shall make a recommendation to the board for its consideration. The board may make a recommendation regarding the assessment to the commissioner; and
 - (4) Review and consider other matters deemed by member insurers to be reasonable and proper for the administration of the association and submit them to the board for its consideration. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §§431:21-105, 431:21-106)

§16-173-10 Operations. (a) The association shall provide homeowner and other dwelling coverage with hurricane exclusion endorsements in this State.

- (b)(1) The official address of the association shall be the address of the chairperson of the board, unless otherwise designated by the board.
- (2) The board may employ such persons, firms, or corporations to perform such administrative functions as are necessary for the board's performance of the duties imposed on the association. Such persons, firms, or corporations shall keep records of their activities as may be required by the board, including but not limited to correspondence, meeting minutes, filings, bulletins and records of all financial transactions of the association, its agents, and its board.

- (3) The board may open one or more bank accounts and otherwise invest its funds for use in association business and reasonable delegation of deposit, withdrawal, and investment authority for association business may be made consistent with prudent fiscal policy.
- (4) The board may borrow money from any person including a member insurer, or from an appointed servicing facility as the board in its judgment deems advantageous for the association and the public.
- (5) The board may contract with one or more persons, firms or corporations to serve as servicing facilities. Such contract terms shall comply with chapter 431:21, HRS, and may include:
 - (A) Terms of payment to the servicing facility;
 - (B) Authority to be delegated to the servicing facility;
 - (C) Procedures for issuing policies and endorsements;
 - (D) Procedures for records to be kept for correspondence, meeting minutes, filings, bulletins and all financial transactions of the association, its agents and its board;
 - (E) The processing of applications and the inspection of properties to be insured;
 - (F) Procedures for adjusting claims presented under policy coverages;
 - (G) Requirements of bonds to assure performance; and
 - (H) Any other provision deemed necessary and desirable by the board. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §§431:21-105,431:21-106)

§16-173-11 Maximum policy limits. The maximum limit of liability per policy for damage to any structure to be assumed by the association under this program shall not exceed \$250,000. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-12 Commissions to licensed agents. All policies of the association shall be issued through licensed general agents as defined in section 431:9-102, HRS. Such agents shall be paid a commission based on the following:

New Business

| <u>Protection Classes</u> | <u>Per Cent of Policy Premiums</u> |
|---------------------------|------------------------------------|
| 1-6 | 10.0 |
| 7-10 | 7.5 |
| <u>All Renewals</u> | 5.0 |

In the event of cancellation of a policy, or if an endorsement is issued that requires premiums to be returned to the insured, the agent shall refund ratably to the association commissions on the resulting return premiums at the same rate at which such commissions were originally paid. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-13 Inspection and inspection report. Each member insurer shall establish the manner and scope of the inspection and the form of the inspection report. The inspection guidelines may include setting minimum conditions the property must meet before an inspection is required. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-14 Receiving and servicing applications. (a) Any person having an insurable interest in real or tangible personal property who has been unable to obtain basic property insurance from a licensed insurer may apply to the association through a licensed agent for coverage. The application shall be accompanied by two photographs of the dwelling, one each of the front and rear views of the property.

(b) Within ten days of receiving an application, the association may conduct an inspection of the property to determine the condition of the property and decide if the property qualifies for coverage under standards set forth by the association.

(c) An inspection report shall be made for each property inspected. The report shall cover pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. Additional representative photographs of the property may be taken during the inspection.

(d) The inspector shall have no authority to advise the applicant whether the association will provide coverage.

(e) After the inspection report's completion, a copy of the report and all photographs shall be filed with the association within ten days.

(f) A copy of the inspection report shall be made available to the applicant or the applicant's agent upon the submission of a written request to the association. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-15 Procedures after inspection and application. The association shall, within ten days after receipt of the inspection report or within twenty days after receipt of the application and the waiver of the inspection, complete an action report, advising that:

- (1) The risk is acceptable along with the indicated premium;
- (2) The risk is not acceptable for the reason or reasons stated in the action report; or
- (3) The risk will be accepted if the improvements noted in the action report are made by the applicant and confirmed by reinspection.

If the risk is accepted, the association shall deliver the policy or a binder to the agent or applicant upon receipt of a cashier's check, money order, or personal check in payment of the indicated premium, the check or money order to be payable to the association or designated servicing facility. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-16 Investigation and payment of claims. Each member insurer shall establish guidelines for the investigation and payment of claims. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-17 New business. (a) No new or increased coverage shall be bound, or no application for new or increased coverage shall be accepted, when the property to be insured is within any area that a civil authority has declared of being in imminent danger by an active lava flow. This restriction shall remain in place until such time as the civil authority has declared the property out of imminent danger.

(b) For the provision of extended coverage pertinent to windstorm damage only, no new or increased coverage shall be bound, or no application for new or increased coverage shall be accepted when the National Oceanic and Atmospheric Administration issues a hurricane or tropical storm watch or warning for any island of this State. This restriction will remain in force until twenty-four hours after the hurricane or tropical storm watch or warning has been canceled. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-18 Standard policy coverages. (a) A policy issued under this program shall be for coverage under standard policy forms HO 3, HO 4, HO 6 or DP 3, or their replacements.

(b) Policy endorsements available or required to be included by the association shall be standard policy forms HO 48, HO 70, HO 280, HO 300, DP 300, DP 330, or their replacements, and the hurricane exclusion endorsements standard policy forms HO 550 and DP 550 or their replacements.

(c) All policy forms and endorsements issued shall be filed by the association with the division for approval.

(d) All policies issued shall be for a term of one year.

(e) All policies shall be issued with a deductible of \$500 or \$1,000. A higher deductible may be allowed if it is approved by the board and the division. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-19 Cancellations. No policy or binder issued under this program shall be canceled except:

- (1) For cause which would have been grounds for non-acceptance of the risk under this program had such cause been known to the association at the time of the acceptance;
- (2) For non-payment of premium; or
- (3) With approval of the association. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-20 Renewals. (a) The association will renew an existing policy for a period of one year at the request of the insured. Any such renewal request may be subject to an inspection. Any request by the insured for increased limits may also be subject to an inspection.

(b) A renewal endorsement and a notice of premium due shall be sent to the producer of record. A copy of the notice of premium due shall be sent to the insured and mortgagee at least forty-five days but no more than sixty days prior to the expiration of the policy.

(c) The full premium must be paid prior to the expiration date of a policy in order to provide binding continuity of coverage. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-21 Underwriting standards. Reasonable underwriting standards shall include, but not be limited to, the following:

- (1) A risk must be a residential dwelling used for a private residential purpose only. A risk with a business being conducted on its

premises is ineligible for coverage unless covered under section 16-173-26.

- (2) A residential dwelling shall be a one or two family type, a condominium unit, or an apartment unit.
 - (3) The physical condition of the risk such as its construction, heating, wiring, evidence of previous fires, unrepaired damage or general deterioration shall be considered during the application process. As provided for by section 16-173-14, the application shall be accompanied by two photos, one each of the front and rear views of the property.
 - (4) The present use or housekeeping, such as occupancy, overcrowding, excessive rubbish, or improper storage of flammable materials shall be considered. An abandoned, vacant or unoccupied dwelling is ineligible for coverage.
 - (5) Other specific characteristics of ownership, condition, occupancy, or maintenance of the risk which is violative of law or public policy or may result in unreasonable exposure to loss shall be considered during the application process.
 - (6) A risk shall be accessible by an approved fire protection apparatus.
 - (7) A risk more than thirty years of age shall require the completion of a supplemental application, which shall include, but not be limited to, details concerning the electrical and plumbing systems, and roof construction.
 - (8) Any structure or addition thereto built without the proper building permit is ineligible for coverage.
 - (9) A risk must be insured up to one hundred per cent to value, but shall not exceed the limits of section 16-173-11.
 - (10) A risk which has incurred three unrelated losses within three years, or has two related losses within three years, excluding catastrophe losses, is not eligible for coverage.
 - (11) A risk located within a tsunami inundation area shall have flood insurance if it is located on the third floor or below in a multi-story structure, or if otherwise located in such an area and is subject to comparable exposure as determined by the association.
 - (12) Except for the rule applicable to a property subject to an tsunami inundation area, a neighborhood or area location or any environmental hazard beyond the control of the property owner shall not be deemed to be acceptable criteria for declining a risk.
- [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-22 Rates. (a) Rates for policies in this program shall be filed by persons, firms, or corporations designated by the board on behalf of the association. These rates shall be final rates prepared as a residual market mechanism. In addition to the loss cost components, the rates shall include expenses comprised of, but not limited to, the acquisition and underwriting expenses of the association. These expenses shall not include any State taxes or profit.

(b) Rates shall consist of approved basic loss cost components for the rating organization with the highest premium reported. In addition to the basic loss costs, expenses, and schedule of deductibles, a catastrophe surcharge, to be determined by the association shall be included in the loss cost. The rates shall be actuarially sound so as to avoid subsidy by the voluntary market.

(c) Rates shall be reviewed annually by the association to determine the adequacy of the loss costs as reflected in statewide data. Any surplus attributed to the catastrophe surcharge and its investment earnings shall not inure to the benefit of the basic rates. Any filing shall include a minimum policy premium. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-23 Reinsurance. The board shall appoint a reinsurance committee to annually report to the board whether or not it is advisable to assume or cede reinsurance on policies issued by the association. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-24 Policy territory. (a) For the purposes of this plan, the association shall insure properties in areas designated by the commissioner pursuant to section 431:21-107, or through rule making.

(b) For the purposes of the implementation of this plan, the association shall offer homeowners and other appropriate dwelling coverage described in this plan for all Hawaii risks meeting underwriting standards as set forth in section 16-173-21.

(c) The State of Hawaii is designated as the geographic area eligible for coverage pursuant to section 431:21-107, HRS. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-25 Claim standards. All claims handled by or on behalf of the association shall be investigated and adjusted in accordance with the standards followed by the major property and casualty insurance companies authorized to transact business in this State. All provisions of section 431:13-103(10), HRS,

relating to unfair claim settlement practices shall apply. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-26 Exception. All standard DP-1 form policies and commercial policies already in force shall continue to be renewed using the same underwriting guidelines in force at the time the policies were issued, at the election of the policyholder. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-27 Records and reports. (a) A written record of the proceedings of each board meeting shall be kept. The original of this record shall be retained by the chairperson, unless otherwise designated by the board, with copies being furnished to each board member, the commissioner, and, upon written request, to any member insurer.

(b) The board shall make an annual report to the commissioner and to member insurers. Such report shall include a review of the association's activities and an accounting of its income and disbursements for the past year. Such annual report shall include an audit by a designated independent certified public accountant or accounting firm of the association's financial statement reporting the financial condition and the results of operations.

(c) The board shall keep a record of all financial transactions of the association, its agents, and its board of directors. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

§16-173-28 Severability. If any provision of this regulation or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the regulation and the application for such provision to other persons or circumstances shall not be affected thereby. [Eff 6/13/97] (Auth: HRS §431:21-106) (Imp: HRS §431:21-106)

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Chapter 16-173, Hawaii Administrative Rules, on the Summary page dated February 18, 1997, was adopted on February 18, 1997, following a public hearing held on February 18, 1997, after public notices were given in the Honolulu Star-Bulletin, Hawaii Tribune-Herald, West Hawaii Today, Maui News and The Garden Island on January 17, 1997.

These rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/ Reynaldo D. Gaulty
REYNALDO D. GRAULTY
Insurance Commissioner

APPROVED AS TO FORM: Date 5/16/97

/s/ James F. Nagle
Deputy Attorney General

APPROVED: Date 5/14/97

/s/ Kathryn S. Matayoshi
KATHRYN S. MATAYOSHI, Director
Commerce and Consumer Affairs

APPROVED: Date 5/30/97

/s/ Benjamin J. Cayetano
BENJAMIN J. CAYETANO
GOVERNOR
State of Hawaii

June 3, 1997
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Adoption of Chapter 16-173
Hawaii Administrative Rules

February 18, 1997

SUMMARY

Chapter 16-173, Hawaii Administrative Rules, entitled "Hawaii Property Insurance Association" is adopted.